

FreightCar America, Inc.
Form 10-K/A
March 16, 2010

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K/A
Amendment No. 1**

**þ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2009**

or

**o TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934**

Commission file number: 000-51237

FREIGHTCAR AMERICA, INC.

(Exact name of registrant as specified in its charter)

Delaware

25-1837219

**(State or other jurisdiction of incorporation or
organization)**

(I.R.S. Employer Identification No.)

**Two North Riverside Plaza, Suite 1250, Chicago,
Illinois**

60606

(Address of principal executive offices)

(Zip Code)

(800) 458-2235

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of class

Name of Each Exchange on Which Registered

Common stock, par value \$0.01 per share

Nasdaq Global Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES ☐ NO ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES ☐ NO ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment of this Form 10-K. ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES ☐ NO ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.: ☐

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Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting
company ☐

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). YES ☐ NO ☒

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant as of June 30, 2009 was \$198.6 million, based on the closing price of \$16.81 per share on the Nasdaq Global Market.

As of March 11, 2010, there were 11,937,896 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Documents

Part of Form 10-K

Portions of the registrant's definitive Proxy Statement for the 2010 annual meeting of stockholders to be filed pursuant to Regulation 14A within 120 days of the end of the registrant's fiscal year ended December 31, 2009.

Part III

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EXPLANATORY NOTE

This amended annual report on Form 10K/A amends the annual report on Form 10-K of the Company for the year ended December 31, 2009 filed with the Securities and Exchange Commission on March 15, 2010 (the Original Filing) for the sole purpose of amending and restating Exhibit 23 Consent of Independent Registered Public Accounting Firm to include the signature of the Independent Registered Public Accounting Firm, which was inadvertently omitted in the Original Filing. Except as discussed above, we have not modified or updated disclosures presented in the Original Filing.

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PART IV

Item 15. Exhibits, Financial Statement Schedules.

Exhibits

(a) Documents filed as part of this report:

1. There are no financial statements included in this Form 10-K/A.
2. There are no financial statement schedules included in this Form 10-K/A.
3. The exhibits listed on the Exhibit Index to this Form 10-K/A are filed with this Form 10-K/A or incorporated by reference as set forth below.

(b) The exhibits listed on the Exhibit Index to this Form 10-K/A are filed with this Form 10-K/A or incorporated by reference as set forth below.

(c) Additional Financial Statement Schedules

None.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

FREIGHTCAR AMERICA, INC.

Date: March 16, 2010

By: /s/ Edward J. Whalen
 Edward J. Whalen, President and
 Chief Executive Officer

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EXHIBIT INDEX

- 3.1 Certificate of Ownership and Merger of FreightCar America, Inc. into FCA Acquisition Corp., as amended (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on September 7, 2006).
- 3.2 Third Amended and Restated By-laws of FreightCar America, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on September 28, 2007).
- 4.1 Form of Registration Rights Agreement, by and among FreightCar America, Inc., Hancock Mezzanine Partners, L.P., John Hancock Life Insurance Company, Caravelle Investment Fund, L.L.C., Trimaran Investments II, L.L.C., Camillo M. Santomero, III, and the investors listed on Exhibit A attached thereto (incorporated by reference to Exhibit 4.3 to Registration Statement Nos. 333-123384 and 333-123875 filed with the Commission on April 4, 2005).
- 10.1 Letter Agreement, dated as of January 26, 2010, by and between FreightCar America, Inc. and Edward J. Whalen (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 26, 2010).
- 10.2 Employment Agreement, dated as of January 14, 2009, by and between FreightCar America, Inc. and Christopher L. Nagel (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on December 17, 2008).
- 10.3 Employment Agreement, dated as of January 10, 2008, by and between FreightCar America, Inc. and Nicholas J. Matthews (incorporated by reference to Exhibit 10.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).
- 10.4 Employment Agreement, dated as of June 11, 2007, by and between FreightCar America, Inc. and Laurence M. Trusdell (incorporated by reference to Exhibit 10.4 to the Company's Annual Report on Form 10-K for the year ended December 31, 2009 filed with the Commission on March 15, 2010).
- 10.5 Amendment to employment agreement of Laurence M. Trusdell dated as of December 29, 2008 (incorporated by reference to Exhibit 10.5 to the Company's Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).
- 10.6 Amendment to employment agreement of Nicholas J. Matthews dated as of December 29, 2008 (incorporated by reference to Exhibit 10.8 to the Company's Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).
- 10.7 FreightCar America, Inc. 2005 Long Term Incentive Plan (Restated to incorporate all Amendments) (incorporated by reference to Appendix I to the Company's Proxy Statement for the annual meeting of stockholders held on May 14, 2008 filed with the Commission on April 8, 2008).
- 10.8 Form of Restricted Share Award Agreement for the Company's employees (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on December 12, 2005).
- 10.9

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Form of Restricted Share Award Agreement for the Company's independent directors (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 27, 2006).

- 10.10 Form of Restricted Share Award Agreement for the Company's employees (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 15, 2008).

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- 10.11 Form of Stock Option Award Agreement for the Company's employees (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 15, 2008).
- 10.12 Lease Agreement, dated as of December 20, 2004, by and between Norfolk Southern Railway Company and Johnstown America Corporation (the "Lease Agreement") (incorporated by reference to Exhibit 10.27 to Registration Statement Nos. 333-123384 and 333-123875 filed with the Commission on April 4, 2005).*
- 10.13 Amendment to the Lease Agreement, dated as of December 1, 2005 (incorporated by reference to Exhibit 10.11 to the Company's Annual Report on Form 10-K for the year ended December 31, 2005).*
- 10.14 Second Amendment to the Lease Agreement, dated as of February 1, 2008, by and between Norfolk Southern Railway Company and Johnstown America Corporation (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2008 filed with the Commission on May 12, 2008).
- 10.15 Second Amended and Restated Credit Agreement, dated as of August 24, 2007, by and among Johnstown America Corporation, Freight Car Services, Inc., JAC Operations, Inc., JAIX Leasing Company and FreightCar Roanoke, Inc. as the Co-Borrowers, the lenders party thereto, LaSalle Bank National Association, as Administrative Agent and Arranger, and National City Business Credit, Inc., as Collateral Agent (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on August 28, 2007).
- 10.16 First Amendment to Second Amended and Restated Credit Agreement, dated as of September 30, 2008, by and among Johnstown America Corporation, Freight Car Services, Inc., JAC Operations, Inc., JAIX Leasing Company and FreightCar Roanoke, Inc., as the Co-Borrowers, the lenders party thereto and LaSalle Bank National Association, as Administrative Agent (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on October 6, 2008).
- 10.17 Second Amendment to Second Amended and Restated Credit Agreement, dated as of March 11, 2009, by and among Johnstown America Corporation, Freight Car Services, Inc., JAC Operations, Inc., JAIX Leasing Company and FreightCar Roanoke, Inc., as the Co-Borrowers, the lenders party thereto and Bank of America, N.A., as successor by merger to LaSalle Bank National Association, as Administrative Agent (incorporated by reference to Exhibit 10.19 to the Company's Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).
- 10.18 Guarantee Agreement, dated as of September 30, 2008, by JAIX Leasing Company in favor of LaSalle Bank National Association, as Administrative Agent, for the benefit of the lenders party thereto (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on October 6, 2008).
- 10.19 Credit Agreement, dated as of September 30, 2008, by and among JAIX Leasing Company, as Borrower, Bank of America, N.A., as Administrative Agent, the lenders party thereto and Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Commission on October 6, 2008).

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10.20	First Amendment to Credit Agreement, dated as of March 11, 2009, by and among JAIX Leasing Company, as Borrower, Bank of America, N.A., as Administrative Agent, the lenders party thereto and Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager (incorporated by reference to Exhibit 10.22 to the Company's Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).
10.21	Guarantee Agreement, dated as of September 30, 2008, by FreightCar America, Inc. in favor of Bank of America, N.A., as Administrative Agent, for the benefit of the lenders party thereto (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Commission on October 6, 2008)
10.22	Management Incentive Plan of Johnstown America Corporation (incorporated by reference to Exhibit 10.29 to Registration Statement Nos. 333-123384 and 333-123875 filed with the Commission on March 17, 2005).
10.23	FreightCar America, Inc. Executive Severance Plan (and Summary Plan Description) (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed with the Commission on September 30, 2009)
10.24	Form of Letter of Resignation (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on December 19, 2006).
10.25	Letter of Resignation (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 29, 2007).
21	Subsidiaries of FreightCar America, Inc. (incorporated by reference to Exhibit 21 to the Company's Annual Report on Form 10-K for the year ended December 31, 2009 filed with the Commission on March 15, 2010).
23	Consent of Independent Registered Public Accounting Firm.
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
*	Confidential treatment has been granted for the redacted portions of this exhibit. A complete copy of the exhibit,

including the
redacted
portions, has
been filed
separately with
the Securities
and Exchange
Commission.